

International Longshoremen's Association, Locals 1242, 1332, 1566, AFL-CIO and Rail Distribution Center, Inc.

Highway Truck Drivers and Helpers, Local 107, affiliated with International Brotherhood of Teamsters, AFL-CIO¹ and Rail Distribution Center, Inc. Cases 4-CD-817-1-2-3 and 4-CD-817-4

January 4, 1993

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

This is a proceeding under Section 10(k) of the National Labor Relations Act. On October 3, 1991,² the Employer, Rail Distribution Center, Inc., filed charges in Case 4-CD-817-1-2-3, alleging that the Respondents, International Longshoremen's Association, Locals 1242, 1332, 1566, AFL-CIO (collectively ILA), violated Section 8(b)(4)(D) of the Act by engaging in proscribed conduct with an object of forcing the Employer to assign certain work to employees they represent rather than to employees represented by Highway Truck Drivers and Helpers, Local 107, affiliated with International Brotherhood of Teamsters, AFL-CIO (Teamsters Local 107). On October 9, the Employer filed a charge in Case 4-CD-817-4 alleging that Respondent Teamsters Local 107 violated Section 8(b)(4)(D) of the Act by engaging in proscribed conduct with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by the ILA. An order consolidating cases and notice of hearing issued January 13, 1992. The hearing was held May 27 and 28 and June 26, 1992, before Hearing Officer Timothy J. Brown.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a Pennsylvania corporation, is engaged in the business of operating an intermodal transportation terminal located on Delaware Avenue in Philadelphia, Pennsylvania. During the last year, in the course and conduct of its operations, the Employer received gross revenues in excess of \$500,000 and received in excess of \$50,000, as a link in the interstate transportation of goods for various customers, includ-

ing Delaware and Hudson Railway and Canadian Pacific Railway. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that ILA Locals 1242, 1332, 1566 and Teamsters Local 107 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

Holt Cargo Systems (HCS) is a stevedoring company engaged in the handling of containerized cargo at the Gloucester Marine Terminal in Gloucester, New Jersey, and the Packer Avenue Marine Terminal in Philadelphia, Pennsylvania. HCS is a member of the Philadelphia Marine Trade Association (PMTA), a multiemployer bargaining association, which is party to a collective-bargaining agreement with the ILA, effective December 1, 1990, through September 30, 1994, covering certain work performed at the Packer Avenue and Gloucester terminals. Pursuant to this agreement, employees represented by ILA Locals 1242, 1332, and 1566 load and unload cargo on and off vessels calling at HCS' terminals; clerk and check the cargo coming in and out of those terminals; load such cargo in and out of trucks and railcars; and perform cargo repair and maintenance. In mid-1991, HCS ceased to handle railroad container cargo within the Packer Avenue terminal because of the terminal's lack of capacity to handle long lines of railcars running through the middle of the terminal premises.

In 1990, Thomas Holt Sr., chief executive officer and owner of HCS, and an individual named Dennis Colgan Sr. formed the Employer to operate an intermodal railyard to service the Canadian Pacific Railway. The three sons of Thomas Holt Sr. (Leo, Michael, and Thomas Jr.) own 50 percent of the Employer's stock, Dennis Colgan Sr. owns 34 percent, and members of Colgan's family own 16 percent. There are five members of the board of directors: Leo Holt (president and chief executive officer), Dennis Colgan Sr. (chairman), Jim Cooney (secretary-treasurer), Dennis Colgan Jr., and Jack Irkilani. Cooney and Irkilani are both related to Dennis Colgan Sr.

The intermodal facility is located on an existing railroad line that runs adjacent to the Packer Avenue Marine Terminal, and is utilized by Canadian Pacific Railway to consolidate freight in Philadelphia and transport it to destinations in Canada. Prior to the existence of the intermodal railyard, freight was shipped directly from the consignor to Halifax, Nova Scotia, from where it was transported by truck or rail to destinations across Canada. The routing of freight through the Port of Philadelphia for delivery to the intermodal railyard resulted in a substantial increase in business for the

¹ The name of the Respondent Teamsters Union has been changed to reflect the new official name of the International Union.

² All dates are in 1991 unless otherwise stated.

local marine terminals, including those operated by HCS.

By letter dated April 9, 1991, while the intermodal railyard was under construction, the ILA requested a meeting with the Employer to discuss the ILA's jurisdiction over the work of loading and/or unloading railroad cars that would be performed at the intermodal facility.

In June, the Employer began hiring employees to work at the intermodal facility. On July 20, after being presented with union authorization cards signed by a majority of its employees, the Employer recognized Teamsters Local 107. On July 30, the Employer executed a collective-bargaining agreement with Teamsters Local 107 as the exclusive representative of employees performing all the work at the intermodal facility.

At least 80 percent of the Employer's business involves the handling of containers delivered to the Packer Avenue terminal by Blue Star Pace and Columbus shipping lines. When the containers arrive at the Packer Avenue terminal, HCS employees represented by the ILA off-load the containers, lift them and secure them to truck chassis, and clerk and check them before they leave the terminal. The containers are then transported from the Packer Avenue terminal to the Employer's intermodal railyard where they are loaded and secured onto railroad flat cars. The driving and loading is performed by the Employer's employees represented by Teamsters Local 107.

The day-to-day operations of the Employer's intermodal facility are supervised by Terminal Manager John Belgiorno, formerly a manager at CSX Intermodal. Belgiorno hires the Employer's employees, maintains payroll, and completes necessary paperwork from a trailer located on the Employer's premises. Belgiorno has never worked for HCS and has no supervisory authority over HCS employees.

On June 21, the ILA filed a grievance against the steamship lines, as parties to the ILA Master Agreement, for allegedly violating the subcontracting provisions of the Master Agreement by permitting their cargo to be loaded onto railcars at the Employer's intermodal facility.

On September 15 and 16, picketers appeared outside the Employer's facility carrying picket signs, which stated: "Holt and RDC unfair to ILA Labor." The picketers blocked the exit from the Packer Avenue terminal and the entrance to the Employer's facility, making it impossible for the Employer to conduct operations. HCS Director of Stevedoring Walter Curran was present for part of the picketing and testified that the ILA picketers said that "they felt that the rail work at RDC was their work, and they wanted it, and that is why they were there." The picketing ended on Sep-

tember 16, when ILA Local 1242 Business Agent Jack McCann asked the picketers to leave the area.

On October 1, Joseph Cimino Jr., president of Teamsters Local 107, wrote to the Employer's terminal manager, John Belgiorno, advising him that if the Employer assigns any or all the disputed work to employees other than those represented by Teamsters Local 107, "Local 107 will take appropriate action necessary to protect its membership, including economic action."

No further picketing or work stoppage by either Union has occurred. Employees represented by Teamsters Local 107 are continuing to perform the work in dispute.

B. Work in Dispute

The work in dispute involves the loading and unloading of containers and/or road trailers on and off of railcars and truck chassis; the securing and unsecuring of containers and/or road trailers on and off of rail trucks and truck chassis; the driving of containers and road trailers into and out of the adjacent marine terminal and other locations; and the clerking and checking related to such work at Rail Distribution Center, Inc. in Philadelphia, Pennsylvania.

C. Contentions of the Parties

The Employer contends that there is reasonable cause to believe that the Respondents violated Section 8(b)(4)(D) of the Act and that the Board must therefore determine the merits of the dispute. The Employer presented evidence that the ILA demanded the work in dispute by letter dated April 9, and that Teamsters Local 107 demanded the same work by letter dated October 1. In the October 1 letter, Teamsters Local 107 threatened to take "economic action" if the Employer assigned the disputed work to employees not represented by Teamsters Local 107.

The Employer contends that Teamsters Local 107 is entitled to the work in dispute based on the collective-bargaining agreement between the Employer and Teamsters Local 107, employer preference, lower wage and benefit costs, more manageable working conditions under the Teamsters Local 107 contract compared to those contained in the ILA contract, area and industry practice, and the loss of jobs to employees represented by Teamsters Local 107 if the work were assigned to employees represented by the ILA. The Employer maintains that Teamsters Local 107 has satisfactorily performed the work in dispute at all times since the Employer began operations.

The ILA contends that the Employer and HCS are a single employer and/or alter ego corporations and that, because of this relationship, the collective-bargaining agreement between the ILA and HCS and past practice of HCS must be considered in determining the dispute. In support, ILA argues that Thomas Holt Sr.,

owner and chief executive officer of HCS, entered into a joint venture with Dennis Colgan Sr. to form the Employer, and soon thereafter Holt arranged for his sons to control 50 percent of the shares and for his son Leo to become president and chief executive officer of the Employer. ILA maintains that the Employer was created as a device to avoid ILA jurisdiction and thereby gain the economic advantage of lower labor rates contained in Teamsters Local 107's contract. ILA also contends that the work being performed at the Employer's intermodal railyard is the same work that was performed by ILA-represented employees at HCS' Gloucester and Packer Avenue terminals prior to the creation of the Employer. Accordingly, it is the ILA's position that the work in dispute should be awarded to employees represented by the ILA.

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute under Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

It is undisputed that both the ILA and Teamsters Local 107 claim the work in dispute. In its letter dated October 1, Teamsters Local 107 informed the Employer that if the Employer assigns any or all the disputed work to employees other than those represented by Teamsters Local 107, "Local 107 will take appropriate action necessary to protect its membership, including economic action." Based on its threat to take "economic action," we conclude that there is reasonable cause to believe that Teamsters Local 107 violated Section 8(b)(4)(D) of the Act.³

The parties stipulate, and we find, that no mechanism exists for resolving the dispute that would bind all the parties. Accordingly, we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors in-

involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certification and collective-bargaining agreements

The Board has not certified any union as the collective-bargaining representative of the Employer's employees. Accordingly, the factor of certifications is not helpful to a determination of the dispute.

The Employer has recognized Teamsters Local 107 as the exclusive bargaining representative of its employees and entered into a collective-bargaining agreement with Teamsters Local 107 covering "all work" involved in the operation of the intermodal facility. The Employer is neither a member of the PMTA nor a party to any collective-bargaining agreements with the ILA, and does not employ any ILA-represented employees.

As noted above, however, the ILA alleges that the Employer and HCS constitute a single employer or alter egos. Accordingly, the ILA claims that its collective-bargaining agreement with HCS is relevant to the instant dispute.

We find no merit to ILA's contention that the Employer and HCS constitute a single employer or are alter ego corporations. In determining the single employer issue, the Board looks at four principal factors: (1) common management, (2) centralized control of labor relations, (3) interrelation of operations, and (4) common ownership or common financial control. *Iron Workers California District Council (Madison Industries)*, 307 NLRB 405 (1992); *Rockwood Energy & Mineral Corp.*, 299 NLRB 1136, 1138 (1990), *enfd.* 942 F.2d 173 (3d Cir. 1991). In cases where a close familial relationship exists between the owners of two companies, the Board focuses on whether the owners of one company retain financial control over the operations of the other. *Shellmaker, Inc.*, 265 NLRB 749, 754-755 (1982). Single-employer status depends on all the surrounding circumstances and has been characterized as an absence of an arm's-length relationship among unintegrated companies. *Fedco Freightlines*, 273 NLRB 399 *fn.* 1 (1984), citing *Blumenfeld Theatres Circuit*, 240 NLRB 206, 215 (1979), *enfd.* 626 F.2d 865 (9th Cir. 1980).

In applying the single-employer factors to the facts presented, we find that the two corporations are not a single employer. First, the Employer and HCS do not share common management. John Belgiorio, a former manager at CSX Intermodal with no ties to HCS, manages the Employer's day-to-day activities, hires employees, and maintains payroll accounts from his trailer located on the Employer's premises. Likewise, the Employer's president, Leo Holt, does not hold any posi-

³ *Teamsters Local 158 (Holt Cargo)*, 293 NLRB 917 (1989); *Longshoremen ILA Local 1291 (Holt Cargo)*, 301 NLRB 394 (1991).

In view of this finding, which properly places the dispute before the Board for determination, we need not decide whether the September 15 and 16 picketing or filing of a grievance by the ILA against the steamship lines for allegedly violating the subcontracting provisions of the ILA Master Agreement provide reasonable cause to believe that Sec. 8(b)(4)(D) has been violated.

tion with HCS. Second, there was no evidence that HCS and/or Thomas Holt Sr. have any influence over the Employer's hiring practices or labor relations. Third, as to interrelation of operations, we find that while the employees of the two Employers do similar work in loading and unloading cargo, the daily operations of the two Employers are not interrelated. HCS operates a waterfront marine terminal for the purpose of loading and unloading cargo from ships, while the Employer operates an intermodal railyard for the purpose of loading and unloading railroad cars for the Canadian Pacific Railway. The Canadian Pacific Railway, and not HCS, arranges for the containers to be delivered to the intermodal railyard. Finally, Thomas Holt Sr. owns HCS and participated in the formation of the Employer, but he currently has no ownership interest in the Employer. Although members of his family own 50 percent of the Employer's stock, there is no evidence that Thomas Holt Sr. exercises any financial control over the Employer's operations. Thus, we find that the factor of common ownership is not present. Under these circumstances, we do not find that the Employer and HCS constitute a single employer.

In determining whether an alter ego relationship exists, the Board considers the single-employer factors discussed above, as well as the additional factors of similar business purpose, the sharing of equipment, customers, and supervision, and the presence or absence of evidence of unlawful motivation. *First Class Maintenance*, 289 NLRB 484 (1988); *Crawford Door Sales Co.*, 226 NLRB 1144 (1976).

Based on the record as a whole, we find that the Employer is not an alter ego of HCS. As discussed above, the Employer and HCS have distinct business purposes. HCS handles cargo for ships calling at the Port of Philadelphia. The Employer consolidates and loads cargo for the Canadian Pacific Railway. Although 80 percent of the cargo delivered to the intermodal facility enters through the Packer Avenue Marine Terminal, cargo is also delivered from other Philadelphia-area marine terminals as well as from inland locations unrelated to any port facility. The decision to utilize the intermodal facility is that of the railroad and not the steamship lines. There is no evidence that the two corporations share equipment, customers, or have common supervision. Further, the record shows that the intermodal facility was established for the sole purpose of loading and unloading cargo for the Canadian Pacific Railway, so that the railroad could transport cargo to various points in Canada more efficiently and economically than shipping cargo directly to Halifax, Nova Scotia. The work of loading cargo onto railcars and consolidating the railcars into trains could not be performed at the Packer Avenue terminal due to its physical inability to handle long lines of railcars. Ac-

cordingly, after considering these additional factors, we find that the Employer is not an alter ego of HCS.

In view of our finding that the Employer and HCS do not have a single-employer or alter ego relationship, we need not consider the PMTA-ILA Master Agreement in determining the dispute. Thus, we find that the factor of collective-bargaining agreements favors an award of the work in dispute to employees represented by Teamsters Local 107.

2. Employer preference and past practice

The Employer's terminal manager testified that the Employer prefers to use employees represented by Teamsters Local 107 to perform the work in dispute. Teamsters Local 107-represented employees have performed this work since the Employer began operations in June 1991. Accordingly, we find that the factor of employer preference and past practice favors an award of the disputed work to employees represented by Teamsters Local 107.

3. Area and industry practice

The record shows that the ILA has contracts with two employers engaged in the operation of intermodal facilities in Maryland and New Jersey, and that Teamsters Local 107 has approximately seven contracts with intermodal operators in New Jersey, Pennsylvania, and Maryland. Based on this evidence, we find that this factor does not favor an award of the disputed work to employees represented by either Union.

4. Relative skills

The Employer's terminal manager testified that he observed employees represented by Teamsters Local 107 satisfactorily perform work similar to the work in dispute when he was employed as a manager at CSX Intermodal, although he also testified that he was unfamiliar with the skills of ILA-represented employees. ILA Local 1566 President James Paylor testified that employees represented by the ILA possess the skills and experience necessary to efficiently perform the disputed work, and have in fact performed similar work at the Packer Avenue and Gloucester marine terminals. Based on this testimony, it appears that both groups of employees are sufficiently skilled to perform the work in dispute. Therefore, we find that this factor does not favor either group.

5. Economy and efficiency of operations

The Employer presented evidence that it is more efficient and economical for the Employer to assign the work in dispute to employees represented by Teamsters Local 107. The Employer presently operates with seven Teamsters-represented employees and two managers. HCS Director of Stevedoring Walter Curran testified that pursuant to ILA contractual manning re-

quirements, the same job with ILA labor would require the employment of 13 employees.⁴ Based on the evidence presented, we find that this factor favors awarding the disputed work to employees represented by Teamsters Local 107.

6. Gain or loss of employment

Employees represented by Teamsters Local 107 are currently performing the work in dispute. An award of this work to employees represented by the ILA would result in the loss of employment for all the employees currently performing the work. Conversely, an award of the disputed work to employees represented by Teamsters Local 107 would cause no discernible loss to ILA-represented employees because they are not currently employed by the Employer and have not been utilized by the Employer to perform the work in dispute at any time. We find that this factor favors an award of the work to employees represented by Teamsters Local 107.

⁴The Employer also argues that it would be more economical to award the disputed work to employees represented by Teamsters Local 107 because their hourly rates are lower than employees represented by ILA locals. The Board does not consider wage differentials as a basis for awarding disputed work. *Painters Local 91 (Frank M. Burson, Inc.)*, 265 NLRB 1685, 1687 (1982); *Stage Employees Local 1 IATSE (American Broadcasting Co.)*, 249 NLRB 1090, 1093 (1980).

Conclusion

After considering all the relevant factors, we conclude that employees represented by Teamsters Local 107 are entitled to perform the work in dispute. We reach this conclusion by relying on the factors of employer preference, past practice, economy and efficiency of operations, gain or loss of employment, and the collective-bargaining agreement between the Employer and Teamsters Local 107. In making this determination, we are awarding the work to employees represented by Teamsters Local 107, not to the Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Rail Distribution Center, Inc., represented by Highway Truck Drivers and Helpers, Local 107, affiliated with International Brotherhood of Teamsters, AFL-CIO, are entitled to perform the work of loading and unloading containers and/or road trailers on and off of railcars and truck chassis; securing and unsecuring of containers and/or road trailers on and off of rail trucks and truck chassis; driving containers and road trailers into and out of the adjacent marine terminal and other locations; and the clerking and checking related to such work at Rail Distribution Center, Inc. in Philadelphia, Pennsylvania.